

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2009 Supp.), hereby gives notice of her intent to adopt proposed rules to amend Chapter 25, Subtitle E of Title 5 of the *District of Columbia Municipal Regulations* (DCMR). Upon final adoption in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, these rules will be included in Chapter 25, Subtitle A of Title 5 of the DCMR as explained below, adding a new Chapter A-25, entitled “Student Code of Conduct.” This proposal takes into consideration public comments received on the previous proposal published on February 6, 2009 (56 DCR 1301).

The proposed rules provide state level standards for the development of student conduct at a Local Education Agency (LEA) in the District of Columbia. The proposed rules recognize there must be a balance between individual rights and responsibilities with the rights and responsibilities of the school community. The proposed rules give an LEA flexibility to develop a student code of conduct consistent with the state standards enunciated in Chapter A-25 of Title 5 of the DCMR. LEAs are required to establish policies and procedures with a broad range of strategies and interventions to maximize learning time, and to minimize classroom disruption. Consistent with best practices and a policy letter dated July 31, 2009, from the U.S. Secretary of Education to chief state education officers, these revisions also emphasize the importance of addressing the appropriate and selective use of seclusion and restraint techniques in schools.

Education rules are included in Title 5 of the DCMR and are part of the District wide recodification and migration of the DCMR to an official electronic version of the DCMR available to the public at www.dcregs.org. See 56 *DC Register* 7861 (October 2, 2009). Title 5 has been renumbered to separate state education rules from the District of Columbia Public Schools (DCPS) rules. Title 5, Subtitle A (5A) of the DCMR contains state education rules. Title 5 Subtitle B (5B) contains DCPS rules as a local education agency. Title 5, Subtitle E (5E) of the DCMR contains rules which are still in effect, and have not yet been revised to separate state regulatory requirements from DCPS rules.

Consistent with the recodification explained above, upon final adoption, Chapter A-25 of Title 5 of the DCMR would replace state level requirements currently found in Chapter E-25 of Title 5 of the DCMR.

Title 5 of the DCMR is amended to add a new Chapter A-25 to Subtitle A to read as follows:

CHAPTER A-25 STUDENT CODE OF CONDUCT

A-2500 GENERAL POLICY

A-2500.1 The legal authority for this chapter is based upon section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000, (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2009 Supp.).

A-2500.2 The purpose of this chapter is to promote a safe and orderly learning environment, by balancing student rights and responsibilities with the rights and responsibilities of the school community.

A-2500.3 The rules provide guidance for LEAs to develop a broad spectrum of strategies to address student behavior and discipline to minimize the disruption of academic instruction.

A-2501 POLICY AND PROCEDURES

A-2501.1 Each LEA shall adopt and implement written policies and procedures in accordance with this chapter that employ intervention and remediation strategies to address student conduct in a fair and appropriate manner, with minimal disruption to a student's instructional program, and which fosters the health and safety of all students. LEAs are encouraged to utilize school wide strategies preventing misbehavior that include the adoption of research-based social-emotional learning principles intended to meet the needs of the school community and promote achievement of high academic standards.

A-2501.2 Policies and procedures shall address certain basic elements, including the following:

- (a) Statement of purpose and intent and/or philosophy regarding student conduct;
- (b) Standards for student conduct, including prohibited student conduct, the range of disciplinary action which may be imposed for such prohibited conduct, the criteria for disciplinary actions which include the utilization of a progression of disciplinary interventions and strategies to prevent and address misbehavior; and
- (c) Specific procedures to address without limitation the following:

- (1) Maintenance of disciplinary records and information;
- (2) Distribution of the student disciplinary policy and procedures to students and their parents or guardians, within thirty (30) days after the first (1st) day of each school year or upon registration, and availability on an LEA's website or through other effective means of communication;
- (3) Use of in-school and off-site suspension in compliance with clearly defined procedures;
- (4) Use of expulsion in extreme and rare occasions as a response to only the most serious misconduct or behaviors, which are illegal, could cause serious harm to self or others, or are a major disruption to the school environment;
- (5) Compliance with federal and local laws which require LEAs to expel from school for a period of not less than one (1) year a student who is determined to have brought a firearm to school or to have possessed a firearm at a school. The chief administering [administrative?] officer of the LEA may modify the expulsion requirement on a case-by-case basis, if that modification is in writing;
- (6) Provision for a student to re-enter school upon completion of an off-site suspension or expulsion;
- (7) Establishment and timely distribution of an education plan for a student who is suspended or expelled that enables the student to maintain academic work on pace with work that the student would have completed if not subject to any disciplinary action;
- (8) Applicability of the student conduct policies during regularly-scheduled school hours and at all school-sponsored events, as specified by the LEA; and
- (9) Compliance with the Individuals with Disabilities Education Act, and applicable rules thereunder, including without limitation, 20 U.S.C. §1412(a)(5) and 34 C.F.R. §300.530 *et seq.* and utilization of procedural safeguards to prevent disproportional disciplinary actions against this population.

A-2502 RESTRAINT AND SECLUSION

- A-2502.1 The use of restraint and/or seclusion is prohibited except in an emergency circumstance, which is defined as a circumstance that meets all of the following criteria:
- (a) The intervention is necessary to protect the student or other person from imminent, serious physical harm;
 - (b) Other less intrusive, nonphysical interventions have failed or have been determined inappropriate.
- A-2502.2 For a student with a behavior intervention plan and/or an Individualized Education Program (IEP), the IEP shall authorize the use of physical restraint or seclusion for specific behavior and circumstances.
- A-2502.3 Any restraint or seclusion shall be applied only by school personnel who are trained in the appropriate use of specific authorized techniques.
- A-2502.4 A space used for seclusion shall, at a minimum, be free of objects and fixtures with which a student could self-inflict bodily harm; shall provide school personnel an adequate view of the student from an adjacent area; and shall provide adequate lighting and ventilation. School personnel shall continuously monitor a student placed in seclusion and speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the school Director, Head of Special Education or other senior member of the staff shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.
- A-2502.5 LEAs shall maintain written incident reports for each individual incident involving a restraint or seclusion, and such reports shall be placed in the student's permanent file.

A-2503 NOTIFICATIONS AND HEARINGS

- A-2503.1 LEA policies and procedures shall provide for proper and timely notification with regard to student misconduct. These procedural safeguards shall include, but are not limited to, the following:
- (a) Minimum notification time-frames;
 - (b) Notification regarding the basis for any disciplinary action and the student's rights; and
 - (c) Procedures for:

- (1) Conferences;
- (2) Hearings; and
- (3) Appeals from disciplinary hearing decisions.

A-2504 REPORTS

- A-2504.1 Each LEA shall maintain a copy of its disciplinary policy and procedure developed in accordance with this chapter. The LEA policy shall be made available to the Office of the State Superintendent of Education upon request.
- A-2504.2. Each LEA shall ensure that all data and information related to disciplinary actions are reported in a manner that complies with all requirements specified by the Office of the State Superintendent of Education.

A-2599 DEFINITIONS

Unless the same term or phrase is defined in this Section A-2599, the definitions set forth in Title 5, Chapter E-20, Section 2099 are incorporated by reference and shall apply to the terms and phrases used in this chapter.

Alternative setting or school program means an educational program other than that in which the student was placed prior to disciplinary action.

Expulsion means the denial of the right of a student to attend a school or program, including all classes and school activities, except alternative settings, for one (1) calendar year.

In-school suspension means the mandatory assignment of a student to attend an assigned alternative school program in lieu of previously assigned curricular activities for a period not to exceed fifteen (15) school days.

Local Education Agency or LEA means the District of Columbia Public School system and/or any individual or group of public charter schools operated under a single charter in the District of Columbia.

Off-site school suspension means the mandatory assignment of a student to attend another appropriate site or alternative school program in lieu of previously assigned activities for a period not to exceed ninety (90) days.

Restraint means the use of bodily force to limit a student's freedom of movement.

Seclusion means the involuntary confinement of a student alone in an area from which he or she is physically prevented from leaving.

Suspension means the denial of the right of a student to attend any school or program, including all classes and school activities, except in an approved alternative setting, in no event exceeding ninety (90) school days pursuant to the provisions of this chapter.

Weapon(s) include, but are not limited to the following: Weapons enumerated in D.C. Official Code § 22-4514(2001); firearms as enumerated in 18 U.S.C. § 921 (2000); knives, razors, martial arts devices and other weapons or instruments designed to be or commonly used as weapons.

Comments on this rule should be submitted, in writing to the following website at www.osse.publiccomment@dc.gov; and/or to the Office of the State Superintendent of Education, Attn.: Jessica Morffi, re: Student Code of Conduct; 441 4th Street, NW, Suite 350 North, Washington, DC 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.